IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.616 OF 1988

Shri Raghunath Narayan Bokil
residing at 19, Sangam Co-op. Housing
Society, Bibavewadi, Pune-37 ..... Petitioner.

V/s

1. Shri Vithal Sawala Limbhore,
through his legal heirs

1-b) Maruti (Baban) Vitthal Limbhore,
son of dec.

1-c) Chandrakant (Chandrabhan)
Vitthal Limbhore, son of dec.

1-d) Vinayak Vitthal Limbhore,
son of dec.

All residing at & post :Hiware
Tal: Purandhar, Dist. Pune

1-e) Mrs. Shakuntala Dashrath Kamathe,
married daughter of dec. residing at
& post K. Khalad, Tal. Purandhar,
Dist Pune.

1-f) Mrs. Yamuna Shankar Kumbharkar,
married daughter of the dec.
Residing at & post : Pundhe,
Tal. Purandhar, Dist. Pune.

1-g) Mrs. Suman Madhukar Pawar,
married daughter of the dec.
Residing at & post : Pawarwadi,
Tal. Purandhar, Dist Pune

(Above order passed in 6293 of 1999 on 13.9.99)

2. Smt. Jankibai Narayan Bokil
(since deceased by her legal heirs
opponent No.1, who is already
on record, the name of opponent
No.2 is deleted as per order dated
25.2.87 and as per the said order
of this court).

3. Shri Vasant Narayan Kamathe,
residing at 9, Palam Court,
M.K. Road, Opp. Oval ground,
Bombay.

4. Shri Tukaram Puraji Kamathe
since deceased, through his legal
heirs :

4(a) Smt. Bhagubai Tukaram Kamathe

4(b) Dyanoba Tukaram Kamathe

4(c) Sopan Tukaram Kamathe

4(d) Nivrutti Tukaram Kamathe

Above all residing at 248, Kasaba
Peth, Pune - 411011.

4(e) Anusaya Suryakant Khirid,
New Bombay, Turbe Type,
Sector 20, Turbes S-II,
R.No.475, Turbe.

4(f) Janabai Maruti Gogawade,
residing at Gogalwadi, Post. Velu,
Taluka : Haveli, District - Pune.

4(g) Tanubai Manik Thopate,
residing at Kaldari, Thopatewadi,
Purandhar, District : Pune.

4(h) Samidra Gulab Gogavale,
Residing at Gogalwadi, Post: Velu,

Taluka: Haveli, District : Pune,

(Amendment carried out vide
Additional Registrar's order dated
12.04.1993, passed in C.A. No.2134
of 1993)

5. Shri N.P. Nikumbh,
Designated member of the Maharashtra
Revenue Tribunal, Pune.

6. State of Maharashtra
(Notice to the Respondents 5 & 6
to be served on Govt. Pleader,
Appellate Side, High Court, Bombay) .....
Respondents.

Mr. R.M. Nakwa for the Petitioner.

Mr. Arun Palekar for Respondent Nos. 1(b) to 1(g)

CORAM: V.M. KANADE, J.

DATE : 11th September, 2007

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of the respondent Nos. 1(b) to 1(g).

2. By this Petition, Petitioner is challenging the order

passed by the Revenue Tribunal in Review Application No.MRT-P-IV-5/83 whereby MRT was pleased to review its earlier order dated 16/10/1982 passed in Revision Application No. MRT-P-VI-5/80 and the order passed in Revision Application by the MRT was set aside so also the Order passed in Tenancy Appeal No.16 of 1976 dated 10/3/1980 and the order dated 6/5/1976 in Tenancy Case No.2/75 was confirmed.

3. It is necessary to state the facts little elaborately in this case since the matter has a chequered history. Gat No.416 admeasuring 3 Hectares 90R situated at village Hirve, Taluka Purandhar, District Pune was the land which was owned by the Petitioner herein. The Exemption Certificate was issued to the Petitioner under section 33B of the Bombay Tenancy & Agricultural Lands Act 1948 (hereinafter referred to as "BT & AL Act"). Against this order, Respondent No.1 preferred an appeal under section 76 of the BT & AL Act. This appeal was, however, rejected by the Tenancy Awal Karkun. Thereafter, Respondent No.1 initiated proceedings under section 88D. However, the

respective application was rejected by the SDO by order dated 28/02/1968. Against this order, Respondent No.1 preferred Special Civil Application No. 1336 of 1968 in the High Court. However, this application was summarily dismissed in limine. Respondent No.1, thereafter, filed a civil suit before the Civil Judge, Junior Division bearing Suit No.80/1968. This suit was dismissed on 13/11/1968. The appeal preferred by Respondent No.1 against this order was also dismissed on 29/11/1968. Thereafter, Respondent No.1 initiated third round of litigation by filing application under section 37 of the BT & AL Act, seeking restoration of half portion of the land which was being cultivated by the Petitioner. In these proceedings Consent Terms were filed on 02/07/1973 and, in the Consent Terms, Respondent No.1 accepted half portion of the said land in question and gave up his claim in respect of remaining half portion. An order was passed in terms of the Consent Terms by the Tahsildar on 10/06/1973. Respondent No.1, thereafter, again, started fourth round of litigation by again filing application under section 37 of the BT & AL Act, claiming possession of the remaining half portion of the suit land. This application was

filed on the ground that the landlord had sold half portion which was in his possession to third party by registered agreement dated 02/06/1973 and, therefore, in view of the provisions of section 37 of the said Act, he was entitled to get possession of the balance land. This application was allowed by the Tahsildar by his order dated 06/05/1976. Against this order, Petitioner preferred Tenancy Appeal No. 16 of 1976 which was allowed and the order passed by Tahsildar was set aside. Against this order, Respondent No.1 preferred Revision Application before the MRT. This revision was also dismissed by MRT by its judgment and order dated 16/10/1982. Respondent No.1, thereafter, filed a review application before the MRT. This review application, however, was allowed and the earlier order passed by the MRT and by SDO was set aside and the order dated 06/05/1976 passed by the Tahasildar, Purandhar in Tenancy Case No.2/75 was confirmed. The Petitioner is challenging the aforesaid order which was passed in review application before the MRT.

4. One of the contentions raised by the Petitioner in this

Petition was that the review application was not maintainable before the MRT since there was no specific provision of review in the Maharashtra Land Revenue Code. In support of the said submission, he relied upon the judgment of the learned Single Judge of this Court. However, Respondents relied upon another judgment of this Court which held that review application was maintainable. The matter was, therefore, referred to the Full Bench. The Full Bench, however, answered the said question which was referred to it in the affirmative and held that the review application was maintainable and that the MRT has jurisdiction to review its own decision given under the Bombay Tenancy and Agricultural Lands Act, 1948 by its judgment dated 20th October, 2006 and the Petition was directed to be listed before the Single Judge for its disposal.

5. I have heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent Nos. 1(b) to 1(g) at length.

6. Three questions which falls for consideration before this

Court are :-

(i) Whether the MRT was justified in reviewing its earlier order?

(ii) Whether Respondent No.1 was precluded from filing his second application under section 37 of the BT & AL Act, after having filed Consent Terms in his earlier application which was also filed under section 37?

(iii) Whether Respondent No.1 still had a right to claim possession under section 37 of the BT & AL Act, even after the Consent Terms were filed in earlier application?

7. The learned Counsel appearing on behalf of the Petitioner submitted that after having filed Consent Terms in earlier application, it was not open for Respondent No.1 to re-agitate this issue by filing second application. He then submitted that concurrent finding was recorded by SDO and by MRT that in view of the Consent Terms, the Respondent No.1 had given up his claim over the remaining land and, having done so, was estopped from again filing a similar

application. He submitted that the MRT, in review, could not have re-appreciated the evidence on record and that it had erred in coming to the conclusion that MRT and SDO in its earlier order had committed error of law which was apparent on the face of the record. He invited my attention to provisions of section 37 and submitted that the right which accrued in favour of tenant under section 37 was extinguished after the tenant had given up his claim in writing which, according to the Petitioner, he had done so by filing Consent Terms and, therefore, his right having extinguished under section 37 of the BT & AL Act, it was not open for him to re-agitate the said issue. The learned Counsel relied upon the unreported judgment of this Court in Writ Petition No.188 of 1980 in the case of Mandakini D. Marahte Vs. Bharat Pandurang Raut decided on 06/02/1986 and the judgment of the Supreme Court in Genu Laxman Shinde Vs. Chandrakant Dagadu Kotulkar reported in **1999(1) Mh.L.J. 235.** He also relied upon the judgments of the Apex Court in Common Cause Vs. Union of India and Others reported in **(2004) 5 SCC 222** and in Orissa Hydro Power Corpn. Ltd. Vs. Santwant Singh Gill (Dead) by LRs and Others

reported in **(2006) 9 SCC 663.** He then relied upon the judgment of the Apex Court in Harinagar Sugar Mills Ltd and another Vs. State of Bihar and Others reported in **(2006) 1 SCC 509** and, lastly, he referred to the judgment of the Apex court in M/s. Northern India Caterers (India) Ltd Vs. Lt. Governor of Delhi reported in **AIR 1980 SC 674.**

8. The learned Counsel appearing on behalf of Respondent Nos. 1(b) to 1(g), on the other hand, submitted that the landlord, after having obtained possession for personal cultivation under section 31 or under section 33B of the said Act, does not get absolute right of ownership over the said land and that the tenancy of the tenant is not terminated absolutely. He submitted that on an order being passed under section 31 or under section 33B of the said Act, the tenancy is kept in abeyance and that the said right would revive in the event of the landlord not cultivating the land personally or handing over possession of the land to the third party. In support of the said submission, he relied upon the judgment of this Court in Vasant Hariba Vs. Jagannath reported in **1969 Mh.L.J. 249.** He submitted that, in the

present case, the MRT had reviewed its earlier order since it came to the conclusion that the MRT, in its earlier order, had committed an error of law which is apparent on the face of the record and, therefore, the MRT was justified in reviewing its earlier order. He submitted that the Full Bench having held that the MRT had jurisdiction to review its own order, there is no reason for this Court to interfere with the said order while exercising writ jurisdiction under Article 227 of the Constitution of India. He submitted that in the Consent Terms which were filed in the earlier proceedings, Respondent No.1 had not, in terms, given up his tenancy in writing. He submitted that provisions of section 37 clearly mandated that tenancy of the tenant would be terminated only if tenant had relinquished his right of tenancy in writing which was offered to him on the same terms and conditions as was done before the land was given for personal cultivation to the landlord. He submitted that the Consent Terms which were filed did not, in terms, state that the landlord had offered the land on the same terms and conditions and, therefore, the words “unless he has obtained from the tenant his refusal in writing to accept the tenancy

on the same terms and conditions" which are found in section 37 would not apply to the Consent Terms which were filed by the tenant in the earlier proceedings and, therefore, since the landlord had, again, given the land to a third party, the right under section 37 will accrue in favour of the tenant for the remaining land. He submitted that the MRT, in review application, had considered this legal position in favour of Respondent No.1 and, therefore, had come to the conclusion that in earlier orders, error of law was committed by the authorities.

9. I have given my anxious consideration to the submissions made by the learned Counsel appearing for the Petitioner and the Respondent Nos. 1(b) to 1(g).

10. Some of the admitted facts which need to be stated for the purpose of deciding this controversy between the parties are that the Petitioner herein had been declared to be a certificated landlord. Section 33A of the Act defines the words "certificated landlord" which read as under:-

> "**33A.** For the purposes of sections 33B and 33C -
> (i) "certificated landlord" means a person who holds a certificate issued to him under sub-section (4) of section 88C [but does not include a landlord within the meaning of Chapter III-AA holding a similar certificate] and
> (ii) ....."

Under section 33B, a certificated landlord has a right to terminate the tenancy of his tenant if he needs the land for personal cultivation. Section 33B reads as under:-

> **33B.(1)** Notwithstanding anything contained in section 31, 31A or 31B a certificated landlord may, after giving notice and making an application for possession as provided in sub-section (3), terminate the tenancy of an excluded tenant, if the landlord *bona-fide* requires such land for cultivating it personally."
>
> (2) .....
> (3) .....
> (4) .....
> (5) .....
> (6) .....

(7) .....”

It is an admitted position that the Petitioner has been conferred status of certificated landlord. Under section 88C, exemption can be granted from certain provisions to lands leased by persons whose annual income does not exceed Rs 1500/- and, consequently, the Petitioner being a person who falls in that category, was given a certificate under sub-section 4 of section 88C.

11. In the present case, it is an admitted position that in the first round of litigation, the tenant had challenged the said certificate which was granted in favour of the Petitioner herein. However, ultimately, the said proceedings finally concluded after this Court by its judgment and order dated 11/7/1968 in Special Civil Application No.1336 of 1968 rejected the application which was filed by Respondent No.1 and confirmed the order which was passed in favour of the Petitioner. Thereafter, a suit filed by Respondent No.1 was also dismissed. Thus, the settled position is that the the Petitioner was declared to be the certificated landlord and, therefore, had acquired a right to cultivate the land

personally. However, the fact remains that even though this right had accrued in his favour, the tenant still had a right under section 37 to claim back possession in the event of the landlord creating third party rights. Therefore, in my view, the tenant was justified in filing an application under section 37 after he noticed that the landlord had given the land for cultivation to the third party. In these proceedings, Consent Terms have been filed and the tenant agreed to accept half portion of the land. An order was passed by the Tahsildar in terms of the Consent Terms. It is the case of Respondent No.1 that, on the very same day and before the order was passed by the Tahsildar in terms of the Consent Terms on 10/06/1973, the Petitioner agreed to sell the land by registered agreement of sale to Respondent Nos. 3 to 5 and, therefore, he filed the second application vide Tenancy Case No.2 of 1975. The entire controversy, therefore, revolves around the fact of maintainability of the second complaint/application. In order to decide this controversy, it would be essential to consider the provisions of section 37 which reads as under:-

> "37. If after the landlord takes possession of the land after the termination of the tenancy [under section 31], [33B or section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956] he fails to use it for any of the purposes specified in the notice given under [section 31], [33 B or section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956] within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof."

A perusal of the aforesaid section clearly discloses that the

said section gives a right to the tenant to seek back possession of the land whose tenancy was terminated. The section, however, carves out two exceptions to the right which accrues in favour of the tenant. The two conditions being **(i)** that the tenant cannot seek right of repossession of the property if the landlord has obtained from the tenant his refusal to accept the tenancy on the same terms and conditions or **(ii)** if the landlord has offered in writing to give the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months from the receipt thereof. If these two conditions are not shown to exist then the tenant would continue to have a right atleast for a period of 12 years from the date on which the landlord has taken possession of the land for personal cultivation. There cannot be any dispute regarding the ratio laid down by the Full Bench of this Court in the case of Vasant Hariba (supra). In the said case, the Full Bench of this Court has, in terms, held that the tenancy of the tenant does not get terminated after the landlord gets back the possession for personal cultivation either under section 31 or 33B of the BT & AL Act and, therefore, in terms of section 37,

the tenant would still get a right to make an application for possession. In this case, however, after the said application was filed, Consent Terms have been filed by the parties. The Consent Terms, in terms state that the tenant has given up his claim of tenancy and he has done so in writing of the Consent Terms which were accepted by Tahsildar when an order to that effect was passed in terms of the Consent Terms. In this view of the matter, submissions made by the learned Counsel appearing on behalf of Respondent Nos. 1 (b) to 1(g) that the tenant continued to have recourse to section 37 cannot be accepted. The tenant, having accepted in writing and having refused to accept the tenancy in respect of half portion of the land, it was not open for the tenant to re-agitate the issue by filing second application under section 37. The submissions made by the learned Counsel appearing on behalf of Respondent Nos. 1(b) to 1(g) that this refusal to accept the tenancy was not on the same terms and conditions also cannot be accepted, particularly because when the first application under section 37 was filed by Respondent No.1, he was seeking the entire land. It was alleged in the first application that the entire land was given

by the Petitioner to Respondent Nos. 3 to 5 and after having made this allegation seeking return of the entire land, he had accepted half portion of the said land. Therefore, it cannot be said that Respondent No.1 had refused to accept the tenancy in respect of the remaining land on the same terms and conditions.

12. In my view, both, the SDO as well as MRT, in its first order, had correctly assessed the legal position and held that the tenant could not have filed second application under section 37. In my view, MRT clearly erred in coming to the conclusion that both the authorities have committed an error of law which is apparent on the face of record. It has to be held that if two view views are possible and one view is taken by the concerned authority, in review, reviewing authority cannot substitute its own view to the other view which is taken by it. In my view, the MRT, in review, has not taken into consideration the ratio of the judgments of the Apex court and this Court wherein this distinction has been drawn and further the Apex Court has, in catena of cases, considered what is an error of law apparent on the face of

the record. The judgment of the MRT in review does not satisfy this test and, therefore, in my view, MRT has exercised a jurisdiction which is not vested in it by law and, therefore, the said judgment in review application is liable to be quashed and set aside. The ratio of the judgments on which reliance is placed by the learned Counsel appearing on behalf of of the Petitioner squarely applies to the facts of the present case.

13. In the result, Writ Petition is allowed. The impugned judgment and order passed by the MRT in review application is quashed and set aside. The order dated 16/10/1982 passed in Revision Application No. MRT-P-VI-5/80 confirming the Order passed by the SDO is hereby confirmed. In the circumstances, there shall be no order as to costs.

(V.M. KANADE, J.)